

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

**Petition of BellSouth Corporation for
Forbearance From the
Prohibition of Sharing Operating, Installation
and Maintenance Functions**

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CC Docket No. 96-149

MCI OPPOSITION

WorldCom, Inc. d/b/a MCI (MCI) hereby submits its opposition to the petition for forbearance filed by BellSouth Corporation (BellSouth) on July 14, 2003 in the above-captioned proceeding.

I. The Commission May Not Forbear from Applying the OI&M Prohibition

The Commission should deny BellSouth's petition for forbearance because, as the Commission has previously found, the Commission may not forbear from applying the provisions of section 272 to any interLATA services for which a Bell Operating Company must obtain authorization under section 271(d) of the Act.¹ Pursuant to section 10(d) of the Act, the Commission may not forbear from applying the requirements of section 271 "until it determines that those requirements have been fully implemented."² Because one of the "requirements" of section 271 is that BOCs may obtain interLATA authorization only if "the requested authorization will be carried out

¹ Bell Operating Companies; Petitions for Forbearance from the Application of Section 272 of the Communications Act of 1934, As Amended, to Certain Activities, Memorandum Opinion and Order, 13 FCC Rcd 2627, 2641 ¶ 23 (1998) (E911 Forbearance Order).

in accordance with the requirements of section 272,”³ the Commission has found that section 10(d), read in conjunction with section 271(d)(3), “precludes [the Commission’s] forbearance for a designated period from section 272 requirements with regard to any service for which a BOC must obtain prior authorization pursuant to section 271(d)(3).”⁴

Consistent with section 10(d), all previous orders in which the Commission has decided to forbear from applying section 272 have involved interLATA services for which authorization pursuant to section 271(d)(3) was not required.⁵ Because BellSouth, by contrast, is asking the Commission to forbear from applying a provision of section 272 to all BellSouth-offered interLATA services, including those for which BellSouth must obtain authorization pursuant to section 271(d)(3), the Commission must deny BellSouth’s petition as inconsistent with section 10(d) of the Act.

II. Even if the Commission Could Forbear, BellSouth Has Not Made the Showing Required by Section 10 of the Act

Pursuant to Section 10(a) of the Act, the Commission may not grant a petition for forbearance unless the petitioner demonstrates that (1) enforcement of the provision in question is not necessary to ensure that rates are just, reasonable, and not

² 47 U.S.C. § 160(d).

³ 47 U.S.C. § 272(d)(3)(B).

⁴ E911 Forbearance Order at ¶ 23. The order’s reference to a “designated period” confirms that the Commission may not forbear from the requirements of section 272 simply because a BOC has obtained interLATA authority. Section 10(d) precludes the Commission from forbearing from section 271(d)(6) of the Act, which makes clear that the “conditions required for . . . approval” of interLATA authorizations, including the section 271(d)(3)(B) requirement that the BOC provide interLATA services in accordance with section 272, continue to apply after interLATA authority has been granted.

⁵ See, e.g., E911 Forbearance Order; Petition of U S West Communications, Inc., for a Declaratory Ruling Regarding the Provision of National Directory Assistance; Petition of U S West Communications, Inc. for Forbearance; The Use of N11 Codes and Other Abbreviated Dialing Arrangements, Memorandum Opinion and Order, 14 FCC Rcd 16252 (1999) (NDA Forbearance Order).

unreasonably discriminatory; (2) enforcement of the provision is not necessary to protect consumers; and (3) forbearance is not in the public interest. Even if the grant of BellSouth's petition were not precluded by section 10(d), the Commission would have to deny BellSouth's petition because BellSouth has not made the showing required by section 10(a).

A. The OI&M Prohibition Remains Necessary to Ensure that BellSouth's Rates and Practices are Just, Reasonable, and Not Unreasonably Discriminatory

BellSouth contends that the prohibition on OI&M sharing is not necessary to ensure just and reasonable rates, arguing (1) that the Commission's affiliate transactions rules and price cap regulation are sufficient to maintain just and reasonable rates; and (2) that the non-discrimination safeguards in sections 202, 251, and 272 of the Act are sufficient to guard against discrimination. But those arguments have already been rejected by the Commission in the Non-Accounting Safeguards Order and, only three years ago, in the Third Order on Reconsideration.⁶ BellSouth is unable to point to any changed circumstances that would cause the Commission to reach a different conclusion today.⁷

The Commission has already rejected BellSouth's argument that the ban on OI&M sharing is not necessary to prevent cost misallocation (and the resulting unjust and unreasonable rates). In particular, the Commission has rejected BellSouth's contention that there is no fundamental difference between the cost allocations necessary

⁶ Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended, Third Order on Reconsideration, CC Docket No. 96-149, released October 1, 1999, at ¶ 20 (Third Order on Reconsideration).

to monitor the sharing of OI&M services and those necessary to monitor the sharing of other services.⁸ As the Commission explained in the Non-Accounting Safeguards Order, OI&M services are “core functions” that, if shared between the BOC and its section 272 affiliate, would create “substantial opportunities” for improper cost allocation.⁹

Similarly, there is no basis for the Commission to reconsider the Non-Accounting Safeguards Order’s finding that the OI&M prohibition is necessary to prevent the BOC from discriminating against unaffiliated long distance carriers. First, BellSouth provides no basis for the Commission to reconsider its prior finding that sharing of OI&M services “would *inevitably* afford the affiliate access to the BOC’s facilities that is superior to that granted to the affiliate’s competitors.”¹⁰ In the absence of the OI&M sharing restriction, unaffiliated carriers would not obtain installation and repair services in the same manner as BellSouth’s interLATA affiliate. Only the BellSouth interLATA affiliate’s services would be provisioned by the same personnel that install access services. Similarly, only the BellSouth interLATA affiliate would have a network operations center that is shared with the BOC’s network operations center. Consequently, BellSouth’s interLATA affiliate would inevitably obtain superior service because it could obtain installation, repair, and maintenance services without the need to coordinate or negotiate access circuit orders or repair requests with the BellSouth BOCs’ access provisioning organizations.

⁷ See Third Order on Reconsideration at ¶ 20 (“ . . . Bellsouth offers no new rationale for us to reconsider this prior determination.”)

⁸ BellSouth petition at 4.

⁹ Non-Accounting Safeguards Order at ¶ 163.

¹⁰ Non-Accounting Safeguards Order at ¶ 163.

Second, BellSouth provides no basis for the Commission to reconsider its conclusion that the nondiscrimination requirements of section 272(e) are not, by themselves, sufficient to preclude discrimination in the absence of a ban on OI&M sharing. As the Commission explained in the Non-Accounting Safeguards Order, the “nondiscrimination safeguards [of section 272(e)(1)] would offer little protection” if a BOC were permitted to offer local and long distance services on an integrated basis.¹¹ By increasing the transparency of transactions, and ensuring that the BOC’s long distance operations obtain installation, repair, and maintenance services using the same procedures as unaffiliated carriers, the ban on OI&M sharing facilitates the comparison required by section 272(e)(1), i.e., comparison of the intervals provided to competitors with intervals provided to the BOC’s interLATA operations.

B. The OI&M Prohibition is Necessary for the Protection of Consumers

Given that the OI&M prohibition is still necessary to ensure that BellSouth’s access services are provided on a just, reasonable, and nondiscriminatory basis, it is clear that continued enforcement of the OI&M prohibition is necessary for the protection of consumers. Absent the OI&M restriction, consumers would be harmed by BellSouth’s ability to discriminate against its rivals in the long distance market and by higher local and exchange access rates resulting from cost misallocations.

There is no merit to BellSouth’s contention that the ban on OI&M sharing hurts consumers. While BellSouth may face modest additional costs or operational complexity as a result of the ban on OI&M sharing, the costs or operational complexity

¹¹ Non-Accounting Safeguards Order at ¶ 160.

are no different from those faced by competing interLATA carriers. With the exception of circuits that terminate in the limited number of buildings to which MCI has built its own local fiber, MCI must, like BellSouth's section 272 affiliate, coordinate its installation, repair, and maintenance activities with the BellSouth BOCs.

C. The OI&M Prohibition Remains in the Public Interest

BellSouth contends that forbearance would be in the public interest because OI&M sharing would “promote efficiency” by eliminating duplicative costs. But Congress, in enacting section 272(b)(1), has already determined that whatever benefit might result from permitting the BOCs to provide services on an integrated basis is outweighed by the risks that such integration poses to competition in the long distance market.

Even if BellSouth could achieve modest cost savings or operational efficiencies by integrating its OI&M functions – and BellSouth has provided no evidence to support that claim or to quantify those efficiencies – those benefits pale in comparison with the consumer benefits accruing from the OI&M prohibition. First, the OI&M sharing prohibition benefits consumers by limiting BellSouth's ability to misallocate hundreds of millions of dollars in long distance-related OI&M costs to local and exchange access rates. Second, the OI&M restriction benefits consumers by preventing BellSouth from discriminating against its competitors in the long distance market, where there is over \$100 billion in revenue at stake.¹²

¹² Industry Analysis Division, “Statistics of the Long Distance Telecommunications Industry,” January,

III. Conclusion

For the reasons stated herein, the Commission should deny BellSouth's petition for forbearance.

Respectfully submitted,
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